

## RESPONSES TO COMMENTS

The Military Traffic Management Command (MTMC) proposed to revise the procedures it uses to procure long term recurring freight transportation services from motor carriers and barge operators in a Notice posted in the Federal Register on July 21, 2000 (Volume 65, Number 141). We invited comments through 19 September 2000.

We received responses from the following organizations: **McClellan Truck Lines, Landstar, CrossRoad Carriers, National Motor Freight Traffic Association, Inc. (NMFTA), Virginia Hiway, J. B. Hunt Transport, Inc., Surf Air Inc., and Nunn, Yoest, Principals & Associates, Inc.**

The comments received addressed many of the same issues and concerns. The basic issues are summarized below, along with our response to each.

**Issue:** Why is MTMC transitioning recurring freight transportation services from motor carriers and barge operators from guaranteed traffic (GT) agreements to Federal Acquisition Regulation (FAR) based instruments?

**Response:** MTMC is transitioning from its Guaranteed Traffic (GT) agreements to FAR based contracts for several reasons. First, there have been several changes in the laws that affected GT agreements that have precipitated this need to change. All federal agencies are required to contract for goods and services in accordance with the Federal Acquisition Regulation (FAR) unless there is a waiver or exemption to this requirement. As stated in the Notice, previously under FAR 47.200, as an exception to the normal requirements, the Government, in addition to individual GBL shipments where the GBL serves as the contract, could also acquire transportation using 49 U.S.C. 10721 rates even though the FAR normally applies to transportation acquired by sealed bid or negotiated contracts (i.e., not individual GBL traffic). In the past, under those rules, MTMC could and did use FAR exempt procedures for traffic based upon Section 10721 rates. 49 U.S.C. 10721 was part of the Interstate Commerce Act which regulated rates offered by common carriers. This Act has been substantially amended in recent years, most notably by the Trucking Industry Reform Act of 1994, which abolished tariff-filing requirements for motor carriers of freight, and by Public Law 101-88, the ICC Termination Act of 1995 that abolished the Interstate Commerce Commission. Thus, the provisions of the former Section 10721, to the extent it still exists in the revised form as sections 10721, 13712 and 15504, have no practical application to the freight service DOD acquires from carriers.

Secondly, the procedures we have utilized to acquire services utilizing GT agreements have evolved into a procedure in which many FAR based provisions and procedures have been infused. Therefore, adopting a FAR-based program will afford all parties a regulatory framework, with clearly established laws and regulations, to address the contractual issues and procedures (bid protests, changes, claims, terminations, mistake in

bid, responsiveness, preaward surveys, and the like) to insure a consistent process which protects both parties interests.

**Issue:** How will the FAR process work?

**Response:** The FAR based GT process will be similar to the current GT process. Many carriers are already familiar with FAR processes because similar processes have been incorporated in the GT process over the years. For example, the procedures used by carriers to protest GT agreements to the General Accounting Office (GAO) are virtually identical to those applicable to FAR contract award protest procedures. The GT Optimum Benefit Negotiation (OBN) evaluation and award process is based on and an adaptation of FAR “best value” contracting procedures. In fact, many of the provisions contained in the GT solicitations/agreements and in MTMC Rules Publication 50 are patterned after FAR clauses and provisions.

We plan to minimize the impact of the change on MTMC, its customers and industry by incorporating as much of the current GT process and procedures into the FAR based process and instruments as possible and by transitioning to the new procedures in a systematic and incremental manner. We will use draft solicitations to obtain industry input and pre-solicitation/pre-proposal conferences in which information can be exchanged and questions answered as training tools to ensure that everyone understands the new process and requirements.

**Issue:** Will there be an increase in record keeping and administrative paperwork?

**Response:** There may be some additional reporting requirements to ensure compliance with laws such as the Service Contract Act and the Small Business Act since under the FAR, the contracting office is obliged to verify and document compliance with these laws. However, since all other industries already do this and find government business to be profitable, it should be no different for the trucking industry. We intend to keep the requirements for proposal data as similar as possible to the current GT proposal requirements. Recent changes to the FAR encourage electronic submission of proposals and a “paperless” environment. We intend to continue to make the maximum use of electronic data interchange (EDI), including as much of the current electronic GT processes as possible. We will continue to use PowerTrack for carrier payment. Reports required to be submitted by carriers during performance (such as proof of delivery, etc.) will remain the same as the current GT processes, consistent with customer requirements and within the framework of the FAR. For carriers who have never contracted with the government, FAR procedures may add some administrative requirements but many companies already have these types of systems in place. While there will be some additional requirements for companies who have done business with MTMC under the current GT process, any required adjustments should not be difficult.

**Issue:** Will the FAR process reverse the current trend toward more commercial-like procedures for freight transportation?

**Response:** No. FAR procedures have been streamlined considerably in the last few years as a result of the Federal Acquisition Streamlining Act of 1994 and the Defense Authorization Act for FY96 as well as a number of recent regulatory changes. The current trend in FAR contracting is toward acquisition procedures that more closely resemble those used in the commercial marketplace. FAR Part 12, Acquisition of Commercial Items, encourages the incorporation of best commercial practices into Government contracting for commercial supplies and services. We expect to use the procedures in FAR Part 12 for most of the GT actions, which will allow us to continue the current trend toward more commercial-like procedures in acquiring freight transportation.

FAR Part 12 and other procurement regulations may be accessed at the following website: <http://ec.msfc.nasa.gov/msfc/procref.html>.

**Issue:** What provisions of the FAR will be used? Will MTMC abandon existing regulations, such as MTMC Rules Publication 50 ? Will MTMC continue to use the Carrier Qualification Program?

**Response:** The FAR is the primary regulation governing the acquisition of supplies and services by all Federal Executive agencies. The FAR establishes uniform policies and procedures and provides a framework within which Government agencies acquire goods and services. Much of the FAR consists of procedural instructions for Government contracting personnel, while the remainder establishes standard provisions and clauses for use in Government solicitations and contracts. The specific clauses and provisions that will apply to any particular solicitation or award for GT transportation services will depend on the type of contract used and other determinations that will be made based on the specific customer requirements. However, the policies, procedures and specific clauses within the FAR that govern all procurements, such as those dealing with protests, disputes and appeal, and competition requirements, will apply to all FAR based GT contractual actions.

With regard to existing regulations such as the MTMC Rules Publication 50, it is too early to say to what extent these regulations will continue to be used. Many of the provisions in MTMC Rules Publication 50 dealing with GT solicitation, evaluation and award processes were patterned after existing FAR provisions and will be replaced by the actual FAR provisions. Other portions of the MTMC Rules Publication 50 dealing with services required to be performed by the carriers that are not addressed in the FAR will probably be retained and incorporated into the FAR based GT solicitations and contracts.

The FAR (FAR Part 9) requires the Government to acquire its goods and services from responsible contractors and requires Contracting Officers to make an affirmative determination of contractor responsibility before awarding any contract. Thus, we expect to continue to use the Carrier Qualification Program as part of our process to ensure that DOD continues to obtain its transportation services from responsible carriers.

**Issue:** Will costs to carriers increase due to FAR compliance requirements and the need to hire FAR experts? In turn, will this reduce the number of carriers willing to do business with MTMC?

**Response:** There are thousands of companies, both large and small, that on a daily basis perform a variety of services for the Government under FAR based contracts. In fact, this is the norm. Those companies seek to win government contracts since they have determined that competing for and winning government business is profitable. It will be no different for the transportation industry. Some requirements, such as compliance with the Service Contract Act, may increase the costs of performing services for some carriers. However, other changes, such as the use of minimum guaranteed volumes and other protections afforded under a legally binding contract, may reduce the carriers' risk and allow them to project their costs with greater accuracy. We do not believe the changes in the process will be as extensive as some carriers may anticipate.

We will make every effort to ensure that the transition is as smooth as possible. We will be issuing draft solicitations and holding pre-solicitation and pre-proposal conferences that will afford industry the opportunity to help shape the transition and the GT program for the future. We look forward to continuing the very successful partnership MTMC has developed with the transportation industry over the past 35 years.

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We appreciate the time and effort taken to provide us comments. Any additional questions/comments can be e-mailed to: Ms. Kim Newman, [newmank@mtmc.army.mil](mailto:newmank@mtmc.army.mil) or Ms. Christina N. Dossman, [dossmanchristina@mtmc.army.mil](mailto:dossmanchristina@mtmc.army.mil) .

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